

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 TODD MATTHEW PHILLIPS,

4 Plaintiff

5 v.

6 AMBER PHILLIPS; HON. LINDA  
7 MARQUIS, in Her Honor's Official Capacity  
8 as Judicial Officer; HON. JENNIFER  
9 HENRY, in Her Honor's Official Capacity as  
10 Judicial Officer; HON. TIMOTHY  
ANDREWS, in His Honor's Official Capacity  
as Judicial Officer; DOES 1 – 10,

Defendants

Case No.: 2:19-cv-00425-APG-BNW

**Order (1) Granting Motion to Dismiss and  
(2) Denying Motion to Amend**

[ECF Nos. 11, 23]

11 Plaintiff Todd Phillips (Todd) is litigating divorce and child custody issues against his  
12 wife Amber Phillips (Amber) in Nevada state court. After the state court issued a temporary  
13 protective order and other orders, Todd filed this lawsuit against Amber and against state court  
14 Judge Linda Marquis and state court Hearing Masters Jennifer Henry and Timothy Andrews  
15 (collectively the "state defendants"). He contends his "right to parent" is being violated in the  
16 state court proceedings. ECF No. 1 at 6. He seeks declaratory and injunctive relief under the  
17 Fifth and Fourteenth Amendments to the United States Constitution.

18 The state defendants move to dismiss the claims against them because the *Younger*  
19 abstention doctrine precludes federal courts from interfering with on-going state court  
20 proceedings. This is especially true when, as here, the plaintiff's federal claims arise from  
21 domestic relations proceedings, which are traditionally left to the state courts. I agree, so I will  
22 grant the motion to dismiss this case.

23 Under *Younger* abstention, federal courts may not grant declaratory or injunctive  
relief that would interfere with state criminal or civil proceedings . . . . Absent

1 extraordinary circumstances, *Younger* abstention is required if the state  
2 proceedings are (1) ongoing, (2) implicate important state interests, and (3)  
provide the plaintiff an adequate opportunity to litigate federal claims.

3 *San Remo Hotel v. City & Cty. of San Francisco*, 145 F.3d 1095, 1103 (9th Cir. 1998). Family  
4 law matters—especially where interlocutory orders exist—are “precisely the type of case suited  
5 to *Younger* abstention.” *H.C. ex rel. Gordon v. Koppel*, 203 F.3d 610, 613-14 (9th Cir. 2000).  
6 Dismissal is required when *Younger* abstention applies. *San Remo*, 145 F.3d at 1103.

7 Todd is actively litigating his divorce and custody issues in state court. Nevada has a  
8 strong interest in how domestic relations issues are resolved. *See H.C. ex rel. Gordon*, 203 F.3d  
9 at 613 (“This is a particularly appropriate admonition in the field of domestic relations, over  
10 which federal courts have no general jurisdiction, . . . and in which the state courts have a special  
11 expertise and experience.”) (internal citations omitted).<sup>1</sup> Nothing precludes Todd from litigating  
12 his federal claims in the state court action. Therefore, I will dismiss the claims under *Younger*  
13 without reaching the other grounds for dismissal raised by the state defendants.

14 I also dismiss Todd’s claim against Amber because it, too, arises from the divorce case  
15 and thus is barred by *Younger*. *See* ECF No. 1 at 7 (“Legal Issue Presented: Where family law  
16 courts find domestic violence, may courts thereupon revoke the perpetrator’s parental rights—  
17 and award sole custody to the victim? (No.)”). In addition, Todd has not filed proof that he  
18 served Amber with the summons and complaint for this case. Federal Rule of Civil Procedure  
19 4(m) allows dismissal of a lawsuit against a defendant who has not been served within 90 days  
20 after the complaint is filed. I do not dismiss the claim against Amber based on that service  
21 defect, however, as *Younger* abstention renders moot any proof of service.

22  
23 <sup>1</sup> *See also Peterson v. Babbitt*, 708 F.2d 465, 466 (9th Cir. 1983) (“[F]ederal courts have  
uniformly held that they should not adjudicate cases involving domestic relations, including the  
custody of minors and *a fortiori*, the rights of visitation.”) (internal quote omitted).

1 Todd filed a motion for leave to amend his complaint to add two causes of action and a  
2 new defendant. ECF No. 23. But his proposed amended complaint is likewise barred by *Younger*  
3 because the proposed claims are inextricably intertwined with the divorce and custody issues  
4 being litigated in state court. Thus, amendment would be futile and the *Younger* abstention  
5 doctrine mandates that I dismiss the lawsuit. Therefore, I deny Todd's motion to amend.

6 I GRANT the defendants' motion to dismiss (**ECF No. 11**). The complaint is dismissed  
7 in its entirety.

8 I DENY the plaintiff's motion for leave to file an amended complaint (**ECF No. 23**).

9 I ORDER the clerk of the court to enter judgment accordingly and close this case.

10 DATED this 14th day of January, 2020.

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13 ANDREW P. GORDON  
14 UNITED STATES DISTRICT JUDGE  
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